

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.17532 OF 2004

Dt: 18.11.2005

Between:

Assistant Engineer (Spl.Works)

S.C.Railway, Guntakal

Anantapur District and others PETITIONERS

AND

O.Peddanna

7/134, Konakondla Post

Via Guntakal

Vajrakarur Mandal

Anantapur District ... RESPONDENT

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.17532 OF 2004

ORDER: *(per the Hon'ble Smt.Justice T.Meena Kumari)*

Heard the learned counsel for the petitioners and the learned counsel for the respondent and at their request, the Writ Petition itself is disposed of at the interlocutory stage.

The Writ Petition is filed by the petitioner-Railways to quash the Order dated 30.01.2004 in O.A.No.946 of 2003 on the file of the Central Administrative Tribunal, Hyderabad.

The above said O.A. was filed by the respondent-applicant challenging the order of punishment of removal from service passed by the first petitioner herein dated 27.04.1999 which has been confirmed by the third petitioner herein by order dated 07.12.1999 and to direct the petitioner-Railways to reinstate him into service with all consequential benefits.

It is the case of the respondent-applicant before the Tribunal that he was appointed as Gangman and worked for more than 15 years under the control of the petitioner-Railways in the pay scale of Rs.2790-2850/-. While he was working at Guntakal Division, he was served with a charge memo alleging that he was absent from duty unauthorisedly for the period from 07.03.1996 to 31.12.1996 and 01.01.1997 to 04.04.1997 totalling 365 days. After conducting enquiry, he was imposed with minor punishment of withholding of annual increment for a period of 24 months (recurring) by order dated 14.08.1998 of the first petitioner. Subsequently, he was served with another charge memo dated 30.09.1998 for his unauthorized absence for the subsequent period from 07.04.1997 to 30.04.1998 totalling 389 days. After conducting enquiry on 06.01.1999, he was removed from service with effect from 01.05.1999 by Order dated 27.04.1999 of the first petitioner-disciplinary authority, which was confirmed by the third petitioner-revisional authority by order dated 07.12.1999. Aggrieved by the same, the above said O.A. has been filed by him contending that there was non-compliance of the principles of natural justice and he has not been afforded with sufficient opportunity to cross examine the witnesses in the inquiry. The authorities have also taken into consideration his previous absence of 365 days i.e., from 07.03.1996 to 04.04.1997 while imposing the punishment of removal from service on the basis of the charge memo issued to him for the subsequent period of absence. He was not allowed to state his defence orally or in writing by the inquiring authority. He was not given opportunity of taking the assistance of defence helper during the examination of the witnesses and that the Inquiry Officer conducted the inquiry without following the proper procedure. The petitioner-Railways ought to have applied the State Railway Leave Rules, 1930 to his case and granted extraordinary leave for the period of absence. The revisional

authority-third petitioner has not passed a reasoned order.

The petitioner-Railways have contested the matter before the Tribunal by way of filing a reply statement contending that the respondent-applicant himself admitted during the inquiry that he was absent from duty from 07.03.1996 to 31.12.1996, 01.01.1997 to 04.04.1997 and from 07.04.1997 to 30.04.1998 (in different spells) without prior sanction of leave on producing the Medical Certificate from the Railway Doctor. Thus, in all, he remained absent for 754 days unauthorisedly and thereby contravened Rule 3(i) (ii) of the Railway Servants (Conduct) Rules, 1966. The petitioner-Railways denied that the respondent-applicant has not been given opportunity to cross examine the witnesses by the Inquiry Officer. It is also contended that the respondent-applicant himself has not asked the permission of the Inquiry Officer to cross examine any witness and he has not submitted any defence brief to the Inquiry Officer. Since the respondent-applicant himself unconditionally admitted the charge during the inquiry, and since he has not requested for taking the assistance of defence helper at any stage, the question of denial of his request for taking the assistance of defence helper, does not arise.

The Tribunal after hearing the arguments of both the parties and after going into the merits of the case, allowed the O.A in part by modifying the punishment of removal from service imposed on the respondent-applicant to that of punishment of compulsory retirement from service with consequential retiral benefits and directed the petitioner-Railways to regularize the period of absence by granting extraordinary leave and to count the said period for the purpose of continuity of service for sanction of retiral benefits such as pension etc. Aggrieved by the same, the present Writ Petition has been preferred.

Learned counsel for the petitioner-Railways has submitted that fact remains that the respondent-applicant was unauthorisedly absent for 754 days and thereby contravened the Rules and hence he is not entitled for any retirement benefits as the period of service would not be ten years for grant of pension to the applicant.

On the other hand, learned counsel for the respondent-applicant has contended that due to family problems, the respondent-applicant was absent from duties and that the Tribunal on a consideration of the length of his past service held that the period of his absence should be treated as extraordinary leave and also rightly modified the punishment of removal from service to that of compulsory retirement.

However, in view of the fact that the respondent was continuously worked and he was allowed to work till the date of passing of orders or removal by the first respondent dated 27.04.99, while confirming the order of the Tribunal to the extent of modifying the punishment of removal from service into one of compulsory retirement, we deem it proper to direct the petitioner-Railways to treat the period of absence of 754 days i.e., from 7.4.1998 to 30.4.1998 (389 days) and from 7.3.96 to 4.4.97 (365 days), as extraordinary leave on loss of pay. We also direct the petitioner-Railways to calculate the benefits accrued to the respondent under compulsory retirement. The above exercise shall be done within a period of three (3) months from today. However, we make it clear that this should not be a precedent in future cases.

With the above observations, the writ petition is disposed of. No costs.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 18.11.2005

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